



FEDERAL RESERVE SYSTEM

12 CFR Part 267

Docket No. R-1657; RIN 7100 AF-44

Collection of Administrative Debts; Collection of Debts Arising from Enforcement and other Regulatory Activity

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is issuing new regulations to provide for the collection of debts owing to the United States arising out of the Board's operations or its enforcement and other regulatory activities.

DATES: The rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Yonatan Gelblum, Senior Counsel (202) 452-2046, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. For users of Telecommunication Device for Deaf (TDD) contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Board is promulgating new regulations to implement the Debt Collection Improvement Act of 1996 (“DCIA”), Public Law 104-134, 110 Stat. 1321-358. The DCIA generally governs the federal government’s debt collection activities. Although the DCIA does not apply directly to the Board, these regulations are adopted pursuant to the Board’s authority under Section 10(4) and 11 of the Federal Reserve Act, 12 U.S.C. 244, 248(i), to adopt rules and regulations governing its operations. The Board is adopting these regulations in order to improve the effectiveness of its debt collection efforts, primarily by allowing it to refer debts for collection to the U.S. Department of the Treasury (“Treasury”). In accordance with the DCIA, Treasury and the U.S. Department of Justice jointly promulgated Federal Claims Collection Standards (“FCCS”), 31 CFR parts 900-904. Agencies may adopt the FCCS without change, or may prescribe agency regulations for collecting debts by administrative offset that are consistent with the FCCS. 31 U.S.C. 3716. The U.S. Department of the Treasury has issued additional regulations applicable to collection under the DCIA at 31 CFR part 285. This rule generally adopts these regulations and the FCCS by cross-reference, except for purposes of

establishing the general scope of these regulations or in limited instances where these authorities expressly require the Board to issue its own regulations.

II. Description of the Final Rule

The regulations set forth the procedures the Board will follow in collecting debts owed to the United States to which part 267 applies. The regulations describe procedures with respect to referral of debts to Treasury or another agency for collection by administrative offset or other means, collection by administrative wage garnishment or salary offset, and the assessment of interest and other charges on debts.

Section 267.1—Purpose and scope. This part establishes procedures for collection of debts owed to the United States. It does not apply if another statute or regulation, or a rule, regulation, or policy adopted by the Board under authority granted to it by the Federal Reserve Act, governs or prohibits collection. For example, the Board has a debt collection policy that provides separate procedures for collecting debts from current employees. These regulations do not apply to the collection of any debts that the Board chooses to collect solely under its debt collection policy rather than these regulations. Thus, the Board is not creating any right to individuals to use the process offered under this regulation for any debt the Board chooses to collect solely

under its debt collection policy. In collecting debts under this part, the Board will also follow the procedures set forth in 5 CFR part 550, subpart K, 31 CFR part 285, and the FCCS.

Section 267.2—Definitions. The definitions in this section are generally based on the FCCS, the DCIA, and related authorities. For purposes of this part, a debt or claim owed to the United States is defined as including a debt owed to the Board, including a debt or claim for repayment of Board-funded benefits administered through the Office of Employee Benefits of the Federal Reserve System, but does not include any debt the Board chooses to collect solely under its debt collection policy.

Section 267.3—Referral of debts for collection action, including offset. This section indicates which debts may be referred to the U.S. Department of the Treasury for collection, including by centralized offset and offset of tax refunds, and adopts procedural protections provided under the FCCS and DCIA prior to such referrals. The Board is not required to duplicate any prior notice or review opportunities already afforded to the debtor prior to referral. The Board may request that an agency other than the U.S. Department of the Treasury conduct non-centralized offset.

Section 267.4—Administrative wage garnishment. This section provides that the Board may collect debts from the wages of persons employed outside of the federal government through administrative wage garnishment. Before doing so, the debtor will be provided an opportunity for a hearing in accordance with the procedures described at 31 CFR 285.11(f).

Section 267.5—Salary offset. This section provides that the Board may collect debts from the wages of person employed at a federal agency (other than the Board) through offset of the person's federal agency salary. It adopts the basic requirements set forth under 5 CFR 550.1104 for the content of agency regulations governing salary offset. It also establishes detailed procedures for a hearing prior to salary offset.

Section 267.6—Interest, penalties, and administrative costs. This section follows the guidelines in the FCCS for charges on delinquent debts and, as required by the FCCS, clarifies when the Board will waive such charges during the pendency of any review.

III. Administrative Law Matters

Administrative Procedure Act

This rule is not subject to the provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, requiring notice, public participation, and deferred effective date, because it relates solely to agency procedure and practice. 5 U.S.C. 553(b).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., applies only to rules for which an agency publishes a notice of proposed rulemaking. Because a notice of proposed rulemaking for this rule is unnecessary, the Regulatory Flexibility Act does not apply to this final rule.

Paperwork Reduction Act Analysis

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each federal banking agency to use plain language in all rules published after January 1, 2000. In light of this requirement, the Board believes this final rule is presented in a simple and straightforward manner and is consistent with this “plain language” directive.

Review by the Office of Personnel Management

Because the proposed rule provides for salary offset pursuant to 5 U.S.C. 5514, in accordance with that section and with 5 CFR 550.1105(a), the Board submitted the proposed rule to the Office of Personnel Management, which approved the rule.

List of Subjects in 12 CFR Part 267

Administrative practice and procedure, Claims, Collection, Government employees, Hearing procedures, Wages.

Authority and Issuance

For the reasons set forth in the preamble, the Board adds part 267 to Chapter II, in Title 12 of the Code of Federal Regulations to read as follows:

PART 267 – PROCEDURES FOR DEBT COLLECTION

Sec.

267.1 Purpose and scope.

267.2 Definitions.

267.3 Referral of debts for collection action, including offset.

267.4 Administrative wage garnishment.

267.5 Salary offset.

267.6 Interest, penalties, and administrative costs.

AUTHORITY: 5 U.S.C. 5514; 12 U.S.C. 244, 248; 31 U.S.C. 3711, 3716, 3717, 3720A, 3720D.

§ 267.1 Purpose and scope.

This part establishes Board procedures for the collection of certain debts owed to the United States.

- (a) Except as provided in paragraph (b) of this section, this part applies to collections by the Board from persons, organizations, or entities indebted to the United States.
- (b) This part does not apply to any debts whose collection is exclusively provided for or prohibited by another statute or applicable regulation, or to any debt of a current Board employee or other debtor where the Board has chosen to proceed solely under its existing internal debt collection policy. This part does not in any way limit or affect the Board's authority under 12 U.S.C. 244 and 12 U.S.C. 248. Nothing in this part precludes the collection of debts through any other legally-available means, or precludes the Board from engaging in litigation as provided under 12 U.S.C. 248(p), 1818(i), or any other applicable law.
- (c) When the Board determines to collect a debt using the procedures under these regulations, in addition to the procedures set forth in this part and subject to paragraph (b) of this section, the Board shall also follow, as applicable, the procedures set forth in 31 CFR part

285 and the Federal Claims Collection Standards (FCCS) (31 CFR chapter IX and parts 900 through 904) for the collection of debts owed to the United States.

- (d) Nothing in this part precludes the compromise, suspension, or termination of collection actions, where appropriate, under standards implementing the Debt Collection Improvement Act (DCIA) (31 U.S.C. 3711 *et seq.*), the FCCS, or any other applicable law, including rules, regulations, and policies adopted by the Board pursuant to authority granted to it under the Federal Reserve Act.
- (e) Nothing in this part shall create any right or benefit, substantive or procedural, enforceable at law or in equity by a party against the United States, its agencies, its officers, or any other person, nor shall the Board's failure to comply with any of the provisions of this part be available to any debtor as a defense. Nothing in this part shall permit a debtor to collaterally attack a final administrative decision rendered under any other applicable statute or regulation, or a judgment by a competent court.

§ 267.2 Definitions.

Except where the context clearly indicates otherwise, the following definitions shall apply to this part.

Administrative offset means withholding funds payable by the United States to, or held by the United States for, a person to satisfy a claim.

Agency includes all executive departments and agencies or instrumentalities in the executive branch, and any other entity referenced in 5 U.S.C. 5514(a)(5)(B).

Board means the Board of Governors of the Federal Reserve System.

Centralized offset is an offset initiated by referral to the Secretary of the Treasury (including a debt collection center designated by the Department of the Treasury) by a creditor agency of a debt for purposes of collection under the Treasury's centralized offset program.

Debt or claim means an amount of money, funds, or property that has been determined by a Board official, in connection with the operational or regulatory activities of the Board, to be owed to the United States from any person, organization or entity (except another Federal entity), including any type of debt referenced in 31 U.S.C. 3701(b). For purposes of this part, a debt or claim owed to the Board, including a debt or claim for repayment of Board-funded benefits administered through the Office of Employee Benefits of the Federal Reserve System, is a debt owed to the United States. A debt does not include any amounts owed by a current Board employee that the Board chooses to collect solely under its debt collection policy.

Debtor means a person who owes a debt, and includes any individual, organization, or entity except another agency.

Delinquent, with respect to a debt or claim, shall have the meaning given to such term at 31 CFR 900.2(b).

Eligible, with respect to a debt or claim, means that referral of the debt or claim for collection is not precluded by any statute or regulation, or by any guidance issued by the U.S. Department of the Treasury.

Garnishment means the process of withholding amounts from the disposable pay of a person employed outside the Federal Government, and the paying of those amounts to a creditor in satisfaction of a withholding order.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of a Federal employee without his or her consent.

§ 267.3 Referral of debts for collection action, including offset.

- (a) *In general.* To the extent not inconsistent with any applicable law or with any rule, regulation, or policy adopted by the Board in the exercise of authority granted to it under the Federal Reserve Act, the Board will refer debts covered by this regulation and which are eligible debts over 120 days delinquent to which this part applies to the U.S. Department of the Treasury for appropriate debt collection action,

including but not limited to centralized offset, and offset of tax refunds.

The Board may also refer any eligible debt less than 120 days delinquent to the U.S. Department of the Treasury for appropriate collection action.

- (b) *Proceedings prior to referral.* At least 60 days prior to referring a debt in accordance with paragraph (a) of this section, the Board will send the debtor the notice described in 31 CFR 901.3(b)(4)(ii)(A), and afford the debtor the procedural protections described in 31 CFR 901.3(b)(4)(ii)(B) and 31 U.S.C. 3720A(b). However, the Board is not required to duplicate any prior notice or review opportunities that it has already afforded the debtor prior to referral.
- (c) *Non-centralized offset.* The Board may request an agency other than the U.S. Department of the Treasury to conduct non-centralized offset. Except in the situations described in 31 CFR 901.3(b)(4)(iii)(A)-(C), the Board will follow the procedures described in paragraph (b) of this section prior to making such a request. When making the request, the Board will certify in writing to the paying agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the Board has fully complied with these regulations.

§ 267.4 Administrative wage garnishment.

The Board may collect debts, or refer debts for collection, from the wages of persons employed outside of the Federal Government by administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D.

Prior to such garnishment, the debtor will be provided a hearing in accordance with the procedures described at 31 CFR 285.11(f).

§ 267.5 Salary offset.

(a) *Applicability.* (1) This section covers government-wide collection of a delinquent debt by administrative offset under 5 U.S.C. 5514 from salary payments of federal government employees other than current Board employees.

(2) This section does not apply where an employee consents to the recovery of a debt from his or her federal government salary.

(b) *Notice.* A Federal Government employee from whom the Board proposes to collect a debt under this section will be provided written notice from the Board at least 30 days before any deductions begin. Such notice will state:

(1) The Board's determination that a debt is owed, including the origin, nature, and amount of that debt;

- (2) The Board's intention to collect the debt by means of deduction from the employee's disposable pay (as defined in 5 CFR 550.1103);
- (3) The frequency and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay), and the Board's intention to continue the deductions until the debt is paid in full or otherwise resolved;
- (4) An explanation of the Board's policy concerning interest, penalties, and administrative costs, including a statement that such assessments must be made unless excused in accordance with the Federal Claims Collections Standards published in 31 CFR parts 900 through 904;
- (5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;
- (6) If not previously provided, the opportunity (under terms agreeable to Board) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset;

- (7) The employee's right to a hearing conducted by an official arranged by the Board if a petition is filed as prescribed by the Board;
- (8) The method and time period for petitioning for a hearing, including the contact information of the official to whom such a petition should be sent;
- (9) That the timely filing of a petition for a hearing will stay the commencement of collection proceedings;
- (10) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;
- (11) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to
 - (i) Disciplinary procedures appropriate under chapter 75 of title 5, United States Code, part 752 of title 5, Code of Federal Regulations, or any other applicable statutes or regulations;

- (ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority; or
 - (iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.
 - (12) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made; and
 - (13) Unless there are applicable contractual or statutory provisions to the contrary, that amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee.
- (c) *Petitions for hearing*—(1) *Time to petition*. A Federal Government employee from whom the Board proposes to collect a debt under this section may request a hearing concerning the existence or amount of the debt or the offset schedule established by the Board by sending a written petition addressed to the official designated in the notice described in paragraph (b) of this section on or before the fifteenth day following receipt of such notice. A hearing will be granted on a

petition that is not filed within such period only if the petitioner shows that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the time limit (unless otherwise aware of it). In all other cases of late or non-filing of such a petition, the employee will be deemed to have waived the right to a hearing and will be subject to salary offset under this section.

(2) *Contents of petition.* The petition must:

- (i) Be signed by the employee;
- (ii) State why the employee believes the Board's determination concerning the existence of amount of the debt is in error;
- (iii) Fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, which the employee believes support his or her position.
- (iv) Specify, if the employee desires an oral hearing, why the matter cannot be resolved by a paper hearing, which is a determination based upon a review of a written record, for example, because the existence or amount of the debt depends on the hearing official's determination of the credibility of witnesses.

- (d) *Form of hearings*—(1) *Hearing official*. A hearing under this section will be conducted by an administrative law judge or another individual not under the supervision or control of the Board.
- (2) *Notice of hearing*. After the employee requests a hearing, the hearing official must issue a notice to the employee and the Board of the type of hearing that will occur. If an oral hearing will occur, the notice will state the date, time, and location of the hearing. If a paper hearing will occur, the employee and the Board will be notified and required to submit evidence and arguments in writing to the hearing official by the date specified in the notice, after which the record will be closed. The employee's failure to appear for an oral hearing or timely submit evidence and arguments as provided for in the notice will be deemed a waiver of the right to a hearing unless the hearing official determines that the failure was due to good cause shown.
- (3) *Oral hearing*. An employee who requests an oral hearing under this section will be provided such a hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone because an issue of credibility or veracity is involved. Where an oral hearing is appropriate, the hearing need not take the form of an evidentiary hearing, as long as both the employee

and the Board are afforded a reasonable opportunity to present their case. Oral hearings may take the form of, but are not limited to:

- (i) Informal meetings in which the employee and Board representative are given full opportunity to present evidence, witnesses, and argument;
 - (ii) Informal meetings in which the hearing official interviews the employee and Board representative; or
 - (iii) Formal written submissions with an opportunity for oral presentation.
- (4) *Paper hearing*. If the hearing official determines that an oral hearing is not necessary, he or she will make the determination based upon a review of the formal written record, including any documentation submitted by the employee or the Board.
- (5) *Record*. The hearing official shall maintain a summary record of any hearing conducted under this section.
- (e) *Decision on hearing*. Unless the employee requests and the hearing official grants a delay in the proceedings, at the earliest practicable date, but in any event no later than 60 days after the filing of the petition requesting the hearing, the hearing official will issue a written decision to the employee. The decision will state the Board's position concerning the existence and amount of the debt, facts purporting to evidence the nature and origin of the alleged debt, the hearing official's

analysis, findings and conclusions, in light of the hearing, as to the employee's and/or Board's grounds, the amount and validity of the debt as determined by the hearing official, and the repayment schedule, if not established by written agreement between the employee and the Board. If the hearing official determines that a debt may not be collected under this section, but the Board finds that the debt is still valid, the Board may still seek collection of the debt through other means, including but not limited to offset of other Federal payments.

- (f) *Deductions under this section.* The method of collection under this section is salary offset from disposable pay (as defined in 5 CFR 550.1103), except as described in this paragraph. The size of installment deductions shall ordinarily bear a reasonable relationship to the size of the debt and the employee's ability to pay. However, the amount deducted for any period under this section may not exceed 15 percent of disposable pay, unless the employee has agreed in writing to the deduction of a greater amount or a higher deduction has been ordered by a court under section 124 of Public Law 97-276 (97 stat. 1195). Ordinarily, debts must be collected in one lump sum where possible. However, if the employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay (or other

applicable limitation as provided in this paragraph) for an officially established pay interval, collection must be made in installments. Such installment deductions must be made over a period not greater than the anticipated period of active duty or employment, as the case may be, except as provided in paragraph (g) of this section.

(g) *Separating or separated employees.* If the employee retires or resigns or if his or her employment or period of active duty ends before collection of the debt is completed, offset may be performed under 31 U.S.C. 3716 from subsequent payments of any nature (e.g. final salary payment, lump-sum leave, etc.) due the employee from the paying agency as of the date of separation to the extent necessary to liquidate the debt. Such offset may also be performed where appropriate against later payments of any kind due the former employee from the United States if the debt cannot be liquidated by offset from any final payment due the former employee as of the date of separation. Nothing in this section shall affect any limitation on alienation of benefits administered by the Federal Reserve System's Office of Employee Benefits.

(h) *Non-waiver and refunds of payments.* An employee's involuntary payment of all or any portion of a debt being collected under 5 U.S.C. 5514 must not be construed as a waiver of any rights which the

employee may have under 5 U.S.C. 5514 or any other provision of contract or law, unless there are statutory or contractual provisions to the contrary. Any amounts paid or deducted under this section will be promptly refunded when a debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation), or the employee's paying agency is directed by an administrative or judicial order to refund amounts deducted from his or her current pay. Refunds do not bear interest unless required or permitted by law or contract.

§ 267.6 Interest, penalties, and administrative costs.

Except with respect to debts referenced in 31 U.S.C. 3717(g), the Board will charge interest, costs, and a six percent penalty on debts covered by this regulation in accordance with 31 CFR 901.9. The Board will not impose interest charges on the portion of the debt that is paid within 30 days after the date on which interest began to accrue, nor impose penalty charges on the portion of the debt that is paid within 90 days after the date on which penalty began to accrue. The Board will not impose any charges during periods during which collection activity has been suspended pending any review provided for in this part if the reviewing official determines that collection of such charges is against equity and good conscience or is not in the best interest of the United

States. The Board may, in its discretion, also waive interest, penalties, and cost charges for good cause shown by the debtor (for example, the debtor is unable to pay any significant portion of the debt within a reasonable period of time, or collection of these charges will jeopardize collection of the principal of the debt) or otherwise as authorized in 31 CFR 901.9(g) and 902.2.

By order of the Board of Governors of the Federal Reserve System, April 11, 2019.

Ann Misback,
Secretary of the Board.

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